

APPEAL NO. 021202  
FILED JULY 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 26, 2002, the hearing officer, found that on \_\_\_\_\_, while working as a school custodian, the respondent (claimant), sustained physical harm or damage to her body while throwing trash bags into a dumpster and that, due to this injury, she was unable to obtain and retain employment at her preinjury wage from June 4, 2001, through February 15, 2002. The hearing officer concluded that the claimant sustained a compensable injury on \_\_\_\_\_, and had disability from June 4, 2001, through February 15, 2002. The appellant (self-insured employer) has appealed these determinations on evidentiary sufficiency grounds. The claimant's response urges the sufficiency of the evidence to warrant our affirmance.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, just three days after returning to work as a school custodian and being off work for a nonwork-related neck injury, she felt a sharp pain in her low back while throwing a bag of trash into the school dumpster; that she finished her shift and reported the injury to the vice-principal the next day; and that she has not been able to work because of her back injury since being taken off work by her treating doctor on June 4, 2001. She acknowledged that she was previously being treated for a nonwork-related neck injury, for which she had underwent surgery on May 7, 2001, and agreed that the neck injury is not part of her claimed back injury.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the

challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(SELF-INSURED)** the name and address of its registered agent for service of process is

**BG**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE).**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Roy L. Warren  
Appeals Judge